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**COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC.
AND TURNER BROADCASTING SYSTEM, INC.**

Their Attorneys

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Summary

Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (collectively, "the Networks") oppose only in part COMSAT's Petition seeking streamlined tariff relief for all of its international video transmission services. The Networks' opposition is limited to that part of COMSAT's request for streamlined tariff relief which relates to proposed rate increases and service changes affecting international occasional use and short-term video transmission services, a segment of the international video services marketplace which is not yet subject to effective competition. The Networks' position is consistent with COMSAT's statement in the Petition acknowledging that occasional services appropriately may be treated separately from other international video transmission services.

Notwithstanding the Networks' opposition to granting COMSAT streamlined tariff relief for proposed rate increases and service changes affecting occasional use and short-term video services, the Networks support granting COMSAT immediate streamlined relief for:

- all tariffs proposing rates, terms and conditions for new full-period (24 hours per day) international video leases greater than three months in length;
- all tariffs proposing reductions in rates for occasional use and short-term international video services;
- all tariffs proposing additional service and rate options (e.g., volume discounts) for occasional use and short-term video services; and
- all offerings of occasional and short-term international video services bundled with other COMSAT services in individually negotiated "contract tariff" arrangements.

Contrary to the implications of the 1996 Brattle Report submitted by COMSAT in support of the Petition, the international video transmission services market is comprised of several distinct submarkets subject to differing levels of competition. For example, the market for regional video services used for direct-to-home (DTH) broadcasting (and transmission to cable head-ends) is separate from the market for transoceanic video transmission services used for backhaul and relay of program materials to broadcast or cable network studios. The U.S. Department of Justice and the U.S. Government Accounting Office ("GAO") have recognized this distinction, and the GAO also correctly has found that occasional use services used for backhaul of video programming materials are subject to less effective competition than full-time transoceanic video services.

The 1996 Brattle Report presents a flawed analysis of the competitive state of the occasional service marketplace. For example, the 1996 Brattle Report exaggerates COMSAT's declining occasional service market share by comparing COMSAT's revenues for half-channel space segment service with COMSAT's competitors' revenues for full channel space segment service and associated earth station fees. The 1996 Brattle Report also exaggerates the geographic scope and availability of the occasional services provided by competing facilities-based providers. The fact that one of COMSAT's competitors accurately can claim that it "serves" a foreign country (for example, with a full-time service using a single earth station in the foreign country) does not necessarily mean that the competitor provides an occasional video service which can be used by broadcasters covering fast-breaking news stories. Moreover, transoceanic fiber optic capacity available for video, which today is limited to a single link between New York and London, is not considered a competitive occasional use option by the Networks, for both operational and cost reasons.

The proposed restructuring of INTELSAT presents another reason to defer granting COMSAT streamlined tariff relief for occasional services. Until a restructuring proposal is adopted, it will not have been determined whether occasional video service will be treated as a "core" service to be provided by the surviving intergovernmental organization. The restructuring of INTELSAT also would be an appropriate time for the Commission to revisit the issue of granting entities other than COMSAT "direct access" to INTELSAT facilities. Direct access would provide

benefits to all U.S. users of the INTELSAT system in terms of encouraging reduced end user rates and providing a competitive check on COMSAT.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
COMSAT Corporation)	
)	
PETITION FOR PARTIAL RELIEF FROM)	RM-7913
THE CURRENT REGULATORY TREATMENT)	File No. 14-SAT-ISP-97
OF COMSAT WORLD SYSTEMS')	
VIDEO AND AUDIO SERVICES)	

**COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC.,
NATIONAL BROADCASTING COMPANY, INC.
AND TURNER BROADCASTING SYSTEM, INC.**

Capital Cities/ABC, Inc., CBS Inc., National
Broadcasting Company, Inc. and Turner Broadcasting System, Inc.
(collectively, "the Networks"), by their attorneys and pursuant
to Section 25.154 of the Commission's rules, hereby submit their
comments on COMSAT Corporation's above-captioned Petition and
accompanying consultant's report ("1996 Brattle Report" or
"Report") filed October 25, 1996.^{1/} In the Petition, COMSAT
claims that it is handicapped by outdated regulatory burdens
which prevent it from competing vigorously for customers and
requests that the Commission grant it "streamlined" tariff

^{1/} By letter dated December 13, 1996, the International Bureau
extended the date for filing comments on COMSAT's Petition to
January 17, 1997.

treatment for all of its international video transmission services.^{2/}

The Networks oppose COMSAT's Petition only in part. Their opposition is limited to that part of COMSAT's request for streamlined tariff relief which relates to proposed rate increases and service changes affecting international occasional use and short-term video transmission services. This is a segment of the international video services marketplace which is not yet subject to effective competition. The Networks' partial opposition is consistent with COMSAT's acknowledgement that international occasional use and short-term video services appropriately may be treated separately from other international video transmission services.^{3/}

The Networks support COMSAT's request with regard to tariffs proposing changes in the rates, terms and conditions for new full-period (24 hours per day) international video leases

^{2/} "Streamlined" tariff treatment is defined by COMSAT in this context as authority to file tariffs on 14 days' notice, with a presumption of lawfulness, and without detailed cost support.

^{3/} Petition at 10 n.12. Although COMSAT's statement mentions only "occasional" services, it must be read in the context of the accompanying 1996 Brattle Report which recognizes that short-term video services are a subset of "occasional" services. See, e.g., 1996 Brattle Report at 3, 31.

greater than three months in length. The Networks also do not oppose specific regulatory changes that will allow COMSAT to respond quickly to the competition it claims exists in the international occasional and short-term video transmission services marketplace by reducing its rates or introducing new service offerings for these services. The Networks, therefore, also support granting COMSAT immediate streamlined relief for:

- all tariffs proposing reductions in rates for occasional use and short-term international video services;
- all tariffs proposing additional service and rate options (e.g., volume discounts) for occasional-use and short-term video services; and
- all offerings of occasional and short-term international video services bundled with other COMSAT services in individually negotiated "contract tariff" arrangements.

The streamlined relief described above should go a long way towards providing COMSAT the relief it seeks.

I. BACKGROUND

COMSAT through its World Systems Division provides voice, data, video and audio communications services between the United States and other countries using the satellite system of

the International Telecommunications Satellite Organization (INTELSAT).^{4/} Pursuant to the Communications Satellite Act of 1962, 47 U.S.C. §701 *et seq.*, and orders of the Commission, COMSAT currently acts as the U.S. Signatory to INTELSAT and is the only U.S. entity that may provide international space segment services to customers using INTELSAT satellites.^{5/} COMSAT also is the largest investor in INTELSAT. COMSAT continues to be regulated as a dominant carrier in the international space segment marketplace.^{6/}

On July 1, 1994, COMSAT filed with the FCC a petition and supporting economic study (the 1994 Brattle Report) in which it claimed that all of the services COMSAT provides via the INTELSAT system, including international television and audio transmission services, had become subject to sufficient competition that the FCC should allow COMSAT to provide all of its services under streamlined tariff authority. Specifically,

^{4/} COMSAT Corporation SEC Form 10-K, April 1, 1996 at 2.

^{5/} Id. at 6.

^{6/} See International Competitive Carrier Policies, 102 F.C.C. 2d 812 (1985); COMSAT Corporation Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services, RM No. 7913, FCC 96-349 ("August 1996 Order").

COMSAT requested authority to file tariffs for all of its INTELSAT services on reduced notice (14 days instead of 45 days), with a presumption that all proposed tariff changes are lawful, and with minimal cost support data.

On August 25, 1994, the Networks filed comments opposing that portion of COMSAT's petition seeking a reduction in the tariff filing requirements for COMSAT's video and audio transmission services. The Networks explained that COMSAT remained dominant in the provision of international video transmission services because neither transoceanic fiber optic cables nor separate satellite systems yet provided effective competition in the specialized market for transoceanic video transmission services. Moreover, the Networks pointed out that the 1994 Brattle Report failed to consider occasional use television services in its analysis of the international satellite services marketplace.

In its August 1996 Order, the Commission found there to be substantial competition in the "wholesale" space segment market on those routes served by U.S. separate satellite systems such as PanAmSat, Orion and Columbia and by transoceanic fiber optic cables and, therefore, streamlined COMSAT's tariff filing

requirements for such routes.^{1/} The Commission, however, concluded that underseas fiber optic cables do not yet offer a competitive alternative to satellites for overseas television transmissions and that the U.S. separate satellite systems now operating cannot match the global reach of INTELSAT in terms of connectivity and transponder capacity.^{2/} The Commission also found that COMSAT failed to demonstrate the existence of effective competition in the market for occasional television and audio services.

In view of these factors, the Commission held that COMSAT had not demonstrated good cause for waiving the dominant carrier tariff rules with respect to video and audio transmission services. The Commission stated, however, that if COMSAT could show a change in circumstances from those described above, COMSAT could file a new request for streamlined tariff treatment of its video transmission services.^{2/} On October 25, 1996, COMSAT filed the instant Petition and 1996 Brattle Report focusing on international video and audio transmission services.

^{1/} August 1996 Order at paras. 24-28.

^{2/} Id. at para. 33.

^{2/} Id. at para. 34.

II. THE NETWORKS' INTEREST

The Networks have a significant interest in the manner in which the Commission regulates COMSAT because they are major users of INTELSAT international satellite services and facilities. The Networks use INTELSAT international satellite services every day to bring fast-breaking news stories, sporting events, and other programming from overseas to the American public. The Networks also use the facilities of international satellite systems separate from INTELSAT, such as the PanAmSat, Orion and Columbia systems.

The Networks lease international satellite video circuits both on a full-period (24 hours per day) and on an occasional use basis. Multi-year full-period circuits generally are used to transmit program materials over the densest traffic routes, such as between Western Europe and the U.S. Full-period video service also can be leased in shorter time increments from one week up to three months for coverage of specific events ranging from the Olympics to an ongoing political or military crisis overseas ("short-term" service).

The Networks use occasional video services primarily for coverage of fast-breaking news stories, sports events or

other entertainment events. Occasional service is INTELSAT's (and COMSAT's) most flexible video offering. Unlike full-period services, occasional service may be ordered on short notice, in small increments (one-minute increments after the minimum ten-minute order) and from different origination and termination points from one day to the next.^{10/}

III. THE COMMISSION SHOULD NOT GRANT COMSAT STREAMLINED TARIFF RELIEF AT THIS TIME TO IMPLEMENT RATE INCREASES FOR OCCASIONAL AND SHORT-TERM SERVICES, EVEN IF IT GRANTS COMSAT STREAMLINED RELIEF FOR OCCASIONAL SERVICE RATE REDUCTIONS AND FOR ALL CHANGES TO LONG-TERM VIDEO SERVICES

The Networks agree with COMSAT that the marketplace for international video transmission services has changed somewhat since 1994. The Networks' experience is that the market for multi-year full-period video leases over the "thick" routes most in demand (e.g., between Western Europe and the U.S.) has become subject to more effective competition since 1994 as additional capacity from competitors to INTELSAT has become available. The

^{10/} Multi-year video services are not adequate substitutes for the INTELSAT occasional services that are needed by broadcasters for coverage of important and unpredictable events occurring in different parts of the globe from one day to the next. Short-term full-period leases are substitutable for occasional services only under some limited circumstances, such as where the satellite origination point is unchanging throughout a news or sporting event whose duration is approximately one week or more.

Networks, however, remain heavily reliant on INTELSAT (and, therefore, COMSAT) facilities for occasional and short-term video transmission services, especially when the services are required over "thin" routes. Because the market for international occasional and short-term video services is not yet subject to effective competition, the Networks urge the Commission to postpone granting relief that would allow COMSAT to implement occasional and short-term video service rate increases or service changes under streamlined tariff regulation.

A. The International Video Transmission Services Market Is Comprised Of Several Distinct Submarkets Subject To Differing Levels of Competition

The Commission has recognized on several occasions that the international satellite services marketplace is not monolithic. The level of effective competition differs across a range of international markets and submarkets. The Commission recognized this in its seminal 1985 International Competitive Carrier decision when it concluded that COMSAT was dominant in the provision of space segment, television services, and multi-purpose earth station services and non-dominant in the provision of international business service ("IBS") and end-to-end

services.^{11/} In the August 1996 Order, the Commission reaffirmed that distinctions should continue to be made among international satellite markets along geographic and product lines, finding substantial competition in the "space segment" service market (except upon "thin routes") but failing to find substantial competition in the market for international video and related audio services.^{12/}

The marketplace for international video and associated audio services also is not monolithic. International video services are comprised of several different submarkets, each of which is subject to a differing level of competition. The 1996 Brattle Report fails to acknowledge this fact and erroneously lumps together regional video services used for direct-to-home (DTH) broadcasting (and transmissions to cable head-ends) with transoceanic video transmission services used for backhaul and relay of program materials to broadcast or cable network studios. These are two different submarkets.

^{11/} International Competitive Carrier Policies, 102 F.C.C. 2d 812, 822 (1985).

^{12/} August 1996 Order at paras. 21, 34.

The distinctions among the various international video transmission service submarkets was set forth recently in a United States General Accounting Office report which stated:

It is difficult to discuss the issue of competition in the international communications market or the international satellite market in a general sense. Analyzing competition in the aggregate may not be appropriate because of the varied institutional and market characteristics surrounding the different services and the varied geographic settings for them.

* * *

Because of such limitations in evaluating competition in a general sense, we examined two distinct primary markets: the one for international telephone service and the one for television/video service. For this second market, we considered the separate segments for the regional distribution of broadcasts and for international and/or transoceanic transmissions.^{11/}

The 1996 Brattle Report's failure to acknowledge that the level of competition in international video service marketplace differs across the "regional DTH" and "transoceanic relay" market sectors constitutes a major flaw in its analysis. If the 1996 Battle Report did not lump together all types of

^{11/} U.S. General Accounting Office, GAO/RCED-97-1, Competition in International Satellite Communications, October 1996 ("GAO Report"), at 35 (footnote omitted).

international video, it likely would have reached the same conclusion as the GAO and other U.S. government agencies had reached in recent reports that the market for occasional use and short-term transoceanic services is not yet subject to effective competition. The GAO, for example, explained:

Users noted that many of the [competitors to INTELSAT/COMSAT] have limited excess capacity because much of their systems is tied up on long-term contracts, so these systems are less able to serve the needs of occasional or short-notice users.

* * *

Both of the recent analyses by the Department of Justice and the FCC have noted the limited competition to INTELSAT in the international and/or transoceanic television/video market. The Department of Justice found that INTELSAT continues to have market power in some segments of this market. Similarly, the FCC found that for international television/video service, especially when it is likely to require the use of a satellite on short notice or to require transmission to multiple receiving stations on earth at the same time, INTELSAT has a strong competitive advantage over competitors, who do not have the same satellite capacity or the intergovernmental organization's extensive network of earth stations in more than the 136 countries.^{14/}

^{14/} GAO Report at 42-43.

The GAO analysis distinguishing the occasional service submarket mirrors the position taken by the U.S. in its recent contribution to the INTELSAT Board of Governors on the proposed restructuring of INTELSAT. The U.S. contribution described "occasional-use broadcast services" as "core" telecommunications services which should be provided by a residual INTELSAT Intergovernmental Organization (IGO) even as other video services such as cable head-end distribution and direct-to-home services are described as distinct "non-core" submarkets that could be provided by an affiliate.^{15/}

B. With Respect To Occasional Service, COMSAT Has Not Demonstrated Good Cause For Waiving The Dominant Carrier Tariffing Rules Because The 1996 Brattle Report Presents A Flawed Analysis Of The Occasional Services Marketplace, Replete With Misleading Assertions And Facts Taken Out Of Context

The 1996 Brattle Report claims that the occasional use video market is characterized by substantial and effective competition. Report at 31. The support for this claim, however, consists in significant part of misleading statements and/or information taken out of context.

^{15/} Contribution of the Party and Signatory of the United States, INTELSAT Future Structure, IWP-3-5E W/4/96, 16 February 1996 ("U.S. Contribution"), at 5.

1. The 1996 Brattle Report's Description of Comsat's Declining Occasional Service Market Share Is Misleading

The 1996 Brattle Report's description of competition in the occasional use and short-term video marketplace is written in terms that leave the impression that COMSAT's market share is small and declining rapidly. Report at 31-34. In fact, however, in its most recent annual report COMSAT reports that "COMSAT's occasional-use service grew about 20 percent during the year."^{16/}

The 1996 Brattle Report's comparison of total occasional service revenues achieved by COMSAT and its competitors also is misleading. The comparison purports to show that COMSAT's share of the market revenue is dwarfed by its competition. The Report, however, compares apples to oranges. The 1996 Brattle Report compares COMSAT's 1995 actuals to estimates of PamAmSat's 1996 revenues, without even acknowledging that 1996 was likely a year of much higher demand than 1995 for all U.S. international occasional service providers because of the Atlanta Olympics and the U.S. political campaigns. Moreover, the revenues of COMSAT's competitors likely included

^{16/} COMSAT Corporation 1995 Annual Report at 10. Note that this report of 1995 usage does not include the traditionally much higher level of occasional usage which occurs during Olympics and election years such as 1996.

charges for both sides of an international transmission plus substantial earth station charges. COMSAT, on the other hand, does not provide earth station or other value-added services other than reselling half-channels of INTELSAT occasional-use space segment. A direct comparison of a separate satellite system's revenues for end-to-end service with COMSAT's revenues for half-channels of space segment is misleading. The fact that COMSAT's occasional service revenues are limited to those derived from half-channels of INTELSAT space segment does not mean that broadcasters are any less reliant on COMSAT/INTELSAT space segment to meet their occasional service requirements.

2. The 1996 Brattle Report Exaggerates the Geographic Scope and Availability of the Occasional Services Provided By Competing Facilities-Based Providers

Other examples of misleading statements in the 1996 Brattle Report abound. The Report cites a PanAmSat marketing brochure for the assertion that "PanAmSat provides service to 110 countries and stresses its full global coverage for occasional-use video services." 1996 Brattle Report at 31 (citation to marketing brochure omitted). Stated independently, each clause of this assertion may be technically accurate. Placed together, however, the clauses are misleading because they imply that PanAmSat provides occasional use service to and from 110

countries and that occasional service is a significant part of PanAmSat's business. In fact, however, just last month PanAmSat distinguished its full time from its occasional services and plainly asserted that "its full time services . . . account for nearly all of PanAmSat's traffic."^{17/} The latter statement is consistent with the Networks' own experience that PanAmSat has little or no available occasional service capacity.

It also has been the Networks' experience that PanAmSat does not provide an occasional video service suitable for use by broadcasters from anywhere close to 110 countries. The reasons for this may include PanAmSat's admitted focus on full time services, its lack of earth station capacity available for occasional service in many foreign countries, and the lack of an in-place infrastructure linking PanAmSat earth stations to other parts of a country from which a transmission would originate.

Columbia and Orion also do not provide occasional video service from all the countries they claim to "serve." In many countries, their landing rights are very limited. For example, Columbia rightfully may claim that it serves South Korea, but its service is limited to a single earth station located by a U.S.

^{17/} Opposition Of PanAmSat Licensee Corp., FCC File No. 2-SAT-AL-97(ii) et al.) December 12, 1996, at 18.

military base which cannot be accessed from any other part of the country. Thus, unless a broadcaster proposes to originate or terminate a transmission from the earth station location itself, Columbia effectively does not provide an occasional video service in South Korea that competes with the services provided by INTELSAT and COMSAT.

**3. The Brattle Reports' Projections Of Future
Satellite Capacity Already Have Proven Inaccurate**

The 1996 Brattle Report's listing of the additional satellite capacity projected to be launched over the next few years cannot be taken as evidence that the occasional use market will become subject to effective competition in the near term. First, just as with existing satellites, the new satellites projected to be launched may be devoted exclusively to full-time services and may not have capacity available for occasional service. Second, similar to the Columbia example noted above, the new satellites may lack landing rights or ground segment capacity adequate to provide an occasional video service suitable for broadcasters seeking to cover fast-breaking news events.

Third, the satellite business is so fraught with risks (financing risks, business plan risks, launch risks) that the Commission should not assume, as the Report does, that all

projected satellite launches will take place as scheduled and that the capacity will be available to provide occasional video service. For example, the 1994 Brattle Report claimed that separate international satellite systems would launch six new satellites usable for service to and from the U.S. in the period between 1994 and 1996.^{18/} Experience has proven, however, that three of the projected satellites, TRW (Pacificom-1), Globostar and Rimsat, either never have been launched or have not been used for transoceanic occasional video traffic by the Networks. Similarly, the 1996 Brattle Report's claim of just a few months ago that COMSAT's competitor Orion will launch two more satellites in 1997 and 1998 already has been proven wrong.^{19/} Orion recently announced that its next launch is now scheduled for the spring of 1999, with no date announced for the third satellite.^{20/} Thus, the Brattle Report's analysis with regard to Orion is way off the mark.

The 1996 Brattle Report's analysis also ignores the practical limitations and real-world problems of broadcasters

^{18/} 1994 Brattle Report at 54 n. 95.

^{19/} 1996 Brattle Report at 8.

^{20/} "Separate System Orion To Restructure Without Industry Partners," Communications Daily, December 18, 1996, at 2.

using regional and domestic satellite systems for transoceanic video transmission services to and from the U.S.^{21/} The fact that a regional or domestic satellite system is capable of providing transoceanic video service is of no competitive significance if the satellite operator chooses not to offer occasional service or if the satellite footprint does not match broadcasters' requirements. For example, contrary to the 1996 Brattle Report's claim,^{22/} the JCSAT satellite's technical capability to transmit between Japan and Hawaii does not make it a meaningful competitive alternative for trans-Pacific video transmissions because most U.S. broadcasters, such as the Networks, locate their operational centers in the continental U.S., not Hawaii. Similarly, the Networks do not consider the other regional satellite systems listed by the 1996 Brattle Report (Hispasat, French Telecom, Argentine, Mexican and Canadian satellites) as significant competitive alternatives to INTELSAT's transoceanic occasional use service, except under limited circumstances (for example, Hispasat would be an alternative if a broadcaster's occasional use requirement was limited to Spain).

^{21/} See 1996 Brattle Report at 9.

^{22/} Id. at 10.